

## **Exhibit A**

## 389TH DISTRICT COURT

## CASE SUMMARY

## CASE NO. C-5149-14-H

Pharr San Juan Alamo Independent School District      §  
 VS.      §  
 Texas Descon, L.P., Descon 4S, L.L.C., ERO International,      §  
 L.L.P. d/b/a ERO Architects, RIMKUS CONSULTING  
 GROUP, INC, CHUBB CORPORATION, GREAT  
 NORTHERN INSURANCE COMPANY

Location: 389th District Court  
 Judicial Officer: Lopez, Letty  
 Filed on: 05/14/2014

## CASE INFORMATION

Case Type: Contract -  
 Consumer/Commercial/Debt  
 (OCA)

## DATE

## CASE ASSIGNMENT

## Current Case Assignment

Case Number      C-5149-14-H  
 Court      389th District Court  
 Date Assigned      05/14/2014  
 Judicial Officer      Lopez, Letty

## PARTY INFORMATION

Plaintiff	Pharr San Juan Alamo Independent School District	Lead Attorneys <b>RAMIREZ, JESUS</b> <i>Retained</i> 956-502-5424(W)
Defendant	CHUBB CORPORATION  Descon 4S, L.L.C.	EDWARDS, SPENCER LAYNE <i>Retained</i> 713-623-2550(W)
	ERO International, L.L.P. d/b/a ERO Architects	BENJAMIN, DAVID <i>Retained</i>
	GREAT NORTHERN INSURANCE COMPANY	Martin, Jennifer G. <i>Retained</i> 214-665-2000(W)
	RIMKUS CONSULTING GROUP, INC	WARD, DAVID A., Jr. <i>Retained</i> 281-681-3515(W)
	Texas Descon, L.P.	EDWARDS, SPENCER LAYNE <i>Retained</i> 713-623-2550(W)

## DATE

## EVENTS &amp; ORDERS OF THE COURT

## INDEX

04/18/2016	Jury Trial (9:00 AM) (Judicial Officer: Lopez, Letty) <i>1 WEEK</i> 10/19/2015 <i>Reset by Court to 04/18/2016</i>	
04/14/2016	Final Pre-Trial Hearing (9:00 AM) (Judicial Officer: Lopez, Letty) <i>J/T 04/18/16</i> 10/15/2015 <i>Reset by Court to 04/14/2016</i>	

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10/27/2015	Request  Clerk's Entry <i>NO SERVICE PAID</i>
10/26/2015	Nonsuit Granted <i>ORDER GRANTING NONSUIT SIGNED BY JUDGE LETTY LOPEZ. CLERK TO ISSUE NOTICE. GS</i>
10/26/2015	Notice Sent <i>ORDER GRANTING NONSUIT</i>
10/20/2015	E-Filing Forwarded to Court Queue <i>ORDER GRANTING NONSUIT</i>
10/20/2015	Order, Signed <i>ORDER GRANTING NONSUIT</i>
10/13/2015	Third Amended <i>PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION</i>
10/13/2015	Order Filed <i>ORDER GRANTING NONSUIT</i>
10/13/2015	Notice of Non-Suit, Filed <i>NOTICE OF NONSUIT AS TO DEFENDANT RIMKUS CONSULTING GROUP, INC.</i>
09/22/2015	Answer Party: Third Party Defendant FRANK LAM & ASSOCIATES, INC <i>FRANK LAM &amp; ASSOCIATES, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION</i>
09/21/2015	Answer Party: Defendant RIMKUS CONSULTING GROUP, INC <i>Defendant Rimkus Consulting Group, Inc.'s Original Answer, Affirmative Defenses &amp; Special Exceptions</i>
09/18/2015	Subpoena Filed <i>CUSTODIAN OF RECORDS</i>
08/31/2015	Return Receipt Received <i>TEXAS SECRETARY OF STATE</i>
08/31/2015	Certificate of Written Discovery <i>Plaintiff's Pharr San Juan Alamo Independent School District's Certificate of Written Discovery</i>
08/31/2015	Amended <i>Plaintiff's Pharr San Juan Alamo Independent School District's First Amended Designation of Experts</i>
08/24/2015	Manual Check Issued <i>DC-2015-101289 Ck#45783 issued to: SOS iao \$55</i>

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08/24/2015	Service Issued (1) CITATION SECT. OF STATE
08/24/2015	Service Issued (1) citation cert.mail
08/24/2015	<b>Citation</b> CHUBB CORPORATION Unserved BY SECRETARY OF STATE
08/24/2015	<b>Citation By Certified Mail</b> RIMKUS CONSULTING GROUP, INC Served: 08/27/2015
08/13/2015	Certificate of Written Discovery Party: Plaintiff Pharr San Juan Alamo Independent School District PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY
08/03/2015	Amended Plaintiff's Second Amended Original Petition
07/21/2015	Notice Sent AGREED LEVEL 3 DOCKET CONTROL ORDER
07/17/2015	Order, Signed AGREED LEVEL 3 DOCKET CONTROL ORDER
07/17/2015	Docket Control Order, Signed AGREED LEVEL 3 DOCKET CONTROL ORDER SIGNED BY JUDGE LETTY LOPEZ. CLERK TO ISSUE. LP
07/16/2015	E-Filing Forwarded to Court Queue AGREED LEVEL 3 DOCKET CONTROL ORDER
07/14/2015	Order Filed AGREED LEVEL 3 DOCKET CONTROL ORDER
07/06/2015	Jury Fee Paid PAYMENT OF JURY FEE
07/02/2015	Jury Demand Party: Third Party Defendant MCALLEN CARPET & INTERIORS, LP NOTICE OF APPLICATION FOR JURY TRIAL
07/02/2015	Answer Party: Third Party Defendant MCALLEN CARPET & INTERIORS, LP THIRD-PARTY DEFENDANT MCALLEN CARPET & INTERIORS, LP'S ORIGINAL ANSWER TO TEXAS DESCON L.P. AND DESCON 4S, L.L.C.'S THIRD-PARTY PETITION
06/19/2015	Designation PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S DESIGNATION OF EXPERTS

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06/17/2015	<b>Tickler</b> (6:00 PM) (Judicial Officer: Lopez, Letty) <i>NONSUIT TBS</i>
06/12/2015	 Certificate of Written Discovery <i>PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
06/12/2015	 Certificate of Written Discovery <i>PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
06/11/2015	 Certificate of Written Discovery <i>PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
06/10/2015	 First Amended <i>PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION</i>
06/03/2015	<b>Special Exceptions</b> (9:00 AM) (Judicial Officer: Lopez, Letty) <i>and Mtn to Dismiss, filed 05/12/15 (in answer)</i> <i>Other</i>
06/03/2015	 Notice of Non-Suit, Filed <i>THIRD PARTY PLAINTIFFS NOTICE OF NONSUIT</i>
06/03/2015	Court Reporter <i>GABRIELA SILVA</i>
06/03/2015	Case Called <i>ATTY DAVID FLORES PRESENT. NON-SUIT TBS. GS</i>
05/14/2015	 Request <i>Request for Removal from Service List</i>
05/13/2015	 Notice Sent <i>OSH ON MOTION TO DISMISS</i>
05/13/2015	 Order, Signed <i>OSH</i>
05/13/2015	Order Setting Hearing, Signed <i>AND SET ON</i>
05/12/2015	E-Filing Forwarded to Court Queue <i>osh to court queue</i>
05/12/2015	 Order Filed <i>Order Sustaining Defendant's Special Exceptions</i>
05/12/2015	 Order Filed <i>Order Setting Hearing</i>
05/12/2015	 Answer Party: Third Party Defendant VCI BUILDERS, INC.

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**CASE SUMMARY****CASE NO. C-5149-14-H***Third Party Defendant's Original Answer*

05/11/2015	<b>Citation</b>  MCALLEN CARPET & INTERIORS, LP Served: 05/18/2015
05/11/2015	 Service Issued <i>CITATION (1)</i>
05/07/2015	 Request <i>FOR CITATION</i>
04/24/2015	 Clerk's Entry <i>CITATION FOR CHACHOS RECYCLING SIGNED OUT TO SO FOR SERVICE</i>
04/17/2015	 Service Returned <i>Return Service on Subpoena Duces Tecum (Notice of Deposition on Written Questions of Custodian of Records for Raba-Kistner, Inc.)</i>
04/10/2015	<b>Citation</b>  MCALLEN CARPET & INTERIORS, LP Returned Unserved 04/27/2015  CHACHO'S RECYCLING Served: 04/28/2015  VCI BUILDERS, INC. Served: 04/16/2015 <i>(3) TO SO FOR SERVICE</i>
04/10/2015	 Service Issued <i>DEFENDANTS' THIRD PARTY PETITION</i>
04/06/2015	 Request <i>FOR CITATIONS</i>
03/30/2015	 Third Party Action (Fee) <i>Defendants' Third Party Petition</i>
03/12/2015	 Notice Sent <i>ORDER GRANTING MOTION TO SUBSTITUTE COUNSEL ESERVED TO JESUS RAMIREZ, DAVID BENJAMIN, SARA WHITTINGTON, STEPHANIE O'ROURKE AND SPENCER EDWARDS</i>
03/12/2015	Order to Substitute Counsel, Signed <i>BY JUDGE LETTY LOPEZ. SPENCER EDWARDS WAS ALLOWED TO SUBSTITUTE FOR DEFENDANTS TEXAS DESCON, LP AND DESCON 4S, LLC. CLERK TO ISSUE. LP</i>
03/11/2015	 Order Filed <i>ORDER GRANTING MOTION TO SUBSTITUTE COUNSEL</i>
03/11/2015	E-Filing Forwarded to Court Queue <i>ORDER GRANTING MOTION TO SUBSTITUTE COUNSEL</i>
03/10/2015	 Order Filed

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*ORDER GRANTING MOTION TO SUBSTITUTE COUNSEL*

03/10/2015	 Motion <i>Motion to Substitute Counsel for Defendants Texas Descon, LP and Descon 4S, LLC</i>
02/26/2015	 Certificate of Written Discovery Party: Plaintiff Pharr San Juan Alamo Independent School District <i>PLAINTIFF, PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
02/13/2015	 Answer <i>Original Answer of Frank Lam &amp; Associates and Frank S. Lam, P.E.</i>
02/06/2015	 Notice Sent <i>AGREED DOCKET CONTROL AND SCHEDULING ORDER</i>
02/05/2015	 Order Signed <i>AGREED DOCKET CONTROL AND SCHEDULING ORDER</i>
02/05/2015	Agreed Scheduling Order, Signed <i>AGREED DOCKET CONTROL AND SCHEDULING ORDER SIGNED BY JUDGE LETTY LOPEZ, CLERK TO ISSUE. LP</i>
02/05/2015	E-Filing Forwarded to Court Queue <i>FWD AGREED DOCKET CONTROL AND SCHEDULING ORDER TO COURT QUEUE. YG</i>
02/03/2015	 Service Returned <i>FRANK LAM &amp; ASSOCIATES, INC.</i>
02/03/2015	 Service Returned <i>FRANK S. LAM, P.E.</i>
01/22/2015	 Service Issued
01/22/2015	<b>Citation</b>  <i>FRANK LAM &amp; ASSOCIATES, INC</i> Served: 01/26/2015  <i>FRANK S. LAM, P.E</i> Served: 01/26/2015 <i>EMAILED TO : BWIX@BENLAWSA.COM</i>
01/14/2015	 Third Party Action (Fee) <i>ERO INTERNATIONAL, LLP D/B/A ERO ARCHITECTS' THIRD-PARTY PETITION</i>
11/17/2014	 Certificate of Written Discovery Party: Plaintiff Pharr San Juan Alamo Independent School District <i>PLAINTIFF PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
10/20/2014	 Certificate of Written Discovery <i>Certificate of Written Discovery - Plaintiff's Discovery Requests to Defendant ERO</i>
09/25/2014	 Notice

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*OF DOCKET CONTROL ORDER & JOINT PRETRIAL ORDER EMAILED TO JESUS RAMIREZ, STEPHANIE O'ROURKE, DAVID P. BENJAMIN*

09/25/2014	 Docket Control Order, Signed <i>Docket Control Order</i>
09/25/2014	Docket Control Order, Signed <i>BY JUDGE LETTY LOPEZ. CLERK TO ISSUE DCO. LP</i>
09/24/2014	E-Filing Forwarded to Court Queue <i>FWD DOCKET CONTROL ORDER TO COURT QUEUE. YG</i>
09/23/2014	<b>Docket Control Conference Hearing/Telephonic (3:00 PM)</b> (Judicial Officer: Lopez, Letty) <i>Held</i>
09/23/2014	Docket Control Conference <i>WAS HELD WITH ATTY JESUS RAMIREZ; ATTY DAVID BENJAMIN AND ATTY STEPHANIE O'ROURKE. CASE SET FOR FPTH ON 10/15/15 @ 9:00 A.M.; J/T ON 10/19/15 @ 9:00 A.M. ESTIMATED TIME 1 WEEK; DEADLINES T.R.C.P.; MEDIATION MANDATORY. LP</i>
09/11/2014	 Certificate of Written Discovery Party: Plaintiff Pharr San Juan Alamo Independent School District <i>PLAINTIFF, PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT'S CERTIFICATE OF WRITTEN DISCOVERY</i>
09/08/2014	 Notice <i>OF ORDER SETTING TELEPHONIC DOCKET CONTROL CONFERENCE EMAILED TO JESUS RAMIREZ, STEPHANIE O'ROURKE, DAVID P. BENJAMIN</i>
09/04/2014	 Order, Signed <i>Order Setting DCC</i>
09/04/2014	Order Setting DCC, Signed <i>AND SET FOR 09/23/14 @ 3:00 P.M. CLERK TO ISSUE NOTICE. JO</i>
09/04/2014	E-Filing Forwarded to Court Queue <i>ORDER SETTING TELEPHONIC DOCKET CONTROL CONFERENCE</i>
08/14/2014	 Certificate of Written Discovery <i>Certificate of Written Discovery (Plaintiff's Responses to Request for Disclosure from Defendants Texas Descon, L.P. and Descon 4S, LLC)</i>
08/13/2014	 Certificate of Written Discovery <i>Plaintiff Pharr San Juan Alamo Independent School District's Certificate of written Discovery</i>
08/08/2014	 Rule 11 Agreement, Filed <i>Rule 11 Agreement - Discovery Responses</i>
06/20/2014	 Answer Party: Defendant ERO International, L.L.P. d/b/a ERO Architects <i>2014.06.20 ERO International, LLP dba ERO Architects' Original Answer and Special Exceptions</i>
06/16/2014	 Answer Party: Defendant Descon 4S, L.L.C. <i>Original Answer of Defendant, Texas Descon, 4S, LLC.</i>

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06/16/2014	<p> <b>Answer</b>            Party: Defendant Texas Descon, L.P.  <i>Original Answer of Defendant, Texas Descon, L.P.</i></p>
05/29/2014	<p><b>Citation By Certified Mail</b></p> <p> Texas Descon, L.P.            Served: 06/03/2014</p> <p> Descon 4S, L.L.C.            Served: 06/03/2014</p> <p> ERO International, L.L.P. d/b/a ERO Architects            Served: 06/02/2014  <i>7014 0510 0001 4918 5945 7014 0510 0001 4918 5952 7014 0510 0001 4918 5969</i></p>
05/14/2014	<p> <b>Original Petition (OCA)</b>  <i>Plaintiff Pharr San Juan Alamo Independent School District's Original Petition</i></p>

DATE	FINANCIAL INFORMATION
	<b>Attorney RAMIREZ, JESUS</b>
	Total Charges 19.00
	Total Payments and Credits 19.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Defendant Descon 4S, L.L.C.</b>
	Total Charges 2.00
	Total Payments and Credits 2.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Defendant ERO International, L.L.P. d/b/a ERO Architects</b>
	Total Charges 95.00
	Total Payments and Credits 95.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Defendant GREAT NORTHERN INSURANCE COMPANY</b>
	Total Charges 936.00
	Total Payments and Credits 936.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Defendant RIMKUS CONSULTING GROUP, INC</b>
	Total Charges 2.00
	Total Payments and Credits 2.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Defendant Texas Descon, L.P.</b>
	Total Charges 425.00
	Total Payments and Credits 425.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Plaintiff Pharr San Juan Alamo Independent School District</b>
	Total Charges 2,056.50
	Total Payments and Credits 2,056.50
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Third Party Defendant FRANK LAM &amp; ASSOCIATES, INC</b>
	Total Charges 4.00
	Total Payments and Credits 4.00
	<b>Balance Due as of 10/27/2015</b> 0.00
	<b>Third Party Defendant MCALLEN CARPET &amp; INTERIORS, LP</b>
	Total Charges 34.00

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Total Payments and Credits	34.00
<b>Balance Due as of 10/27/2015</b>	<b>0.00</b>

<b>Third Party Defendant VCI BUILDERS, INC.</b>	
Total Charges	2.00
Total Payments and Credits	2.00
<b>Balance Due as of 10/27/2015</b>	<b>0.00</b>

## CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO  
 INDEPENDENT SCHOOL DISTRICT

*Plaintiff*

vs.

TEXAS DESCON, L.P., DESCON 4S,  
 L.L.C. and ERO INTERNATIONAL,  
 L.L.P. d/b/a ERO ARCHITECTS

*Defendants*

IN THE DISTRICT COURT

389th JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION**

NOW COMES, Pharr San Juan Alamo Independent School District, Plaintiff herein, complaining of Texas Descon, L.P., Descon 4S, L.L.C., ERO International, L.L.P., d/b/a ERO Architects, Frank Lam & Associates, Inc., and Great Northern Insurance Company, and would show the Court as follows:

**I.**

Plaintiff intends to conduct discovery under Level 2 pursuant to Texas Rules of Civil Procedure 190.2.

**II.**  
**Jurisdiction and Venue**

Venue is proper in Hidalgo County, Texas, as all or a substantial part of the acts or omissions giving rise to this cause of action occurred there. Tex. Civ. Prac. & Rem. Code, Section 15.002(a)(1).

This court may properly assert jurisdiction over the non-resident Defendant pursuant to The Texas Long Arm Statute, Tex. Civ. Prac. & Rem. Code, Section 17.041, et. seq. The non-resident Defendant has established sufficient minimum contacts with the State of Texas so that

this Court may assert personal jurisdiction over Defendant without offending traditional notions of fair play and substantial justice.

### **III. Parties**

Plaintiff is Pharr San Juan Alamo Independent School District, a public independent school district and a political subdivision, duly formed and existing under the laws of the State of Texas, based in Hidalgo County, Texas.

Defendant is Texas Descon, L.P., a business entity with its principal office located in McAllen, Hidalgo County, Texas. This Defendant has already been served in this action.

Defendant is Descon 4S, L.L.C., a business entity with its principal office located in McAllen, Hidalgo County, Texas. This Defendant has already been served in this action.

Defendant is ERO International, L.L.P. d/b/a ERO Architects, a business entity with its principal office located in McAllen, Texas. This Defendant has already been served in this action.

Defendant is Frank Lam & Associates, Inc., a business entity with its principal office located in Austin, Texas. This Defendant has already been served in this action.

Defendant Great Northern Insurance Company is a business entity with its principal office located in Illinois. It may be served by serving attorney Jennifer G. Martin of Schell Cooley, L.L.P at 15455 Dallas Parkway, Suite 550, Addison, Texas 75001.

### **IV. Facts**

On or about February, 2008, the governing board of Pharr San Juan Alamo Independent School District (hereinafter, "Plaintiff" or "the District") authorized a preliminary investigation and assessment into the feasibility of upgrading and/or renovating existing structures at the

District's Memorial Middle School campus in Pharr, Texas. One of the buildings considered for renovations and/or upgrades was a three-story main building, constructed in 1915 or 1918 with subsequent remodeling and/or additions in 1976 and 1986. Other buildings considered for renovation included a building used for textbook storage and a building used as a band hall, both originally constructed sometime in the 1940's.

On or about February 22, 2008, a Houston-based firm of consulting engineers, Terracon, published its report of an on-site property condition assessment and inspection of the buildings considered for renovations/upgrades. Terracon's assessment was based upon visual inspection of the property, some construction drawings relating to alteration and remodeling projects, as well as interviews with the District's construction manager, Mr. Ray Sanchez and Mr. Eli Ochoa, P.E., A.I.A., an engineer working for Defendant ERO International, L.L.P., an architectural firm (hereinafter, "Defendant" or "ERO"). The Terracon report concluded that the buildings were in "fair to poor condition" and recommended that a detailed investigation of the foundation and structural framing be conducted by a qualified structural engineer to ascertain the viability of future renovations of the buildings. The Terracon report further noted that during inspection they discovered water ponding in the basement floor.

On or about March 3, 2008, Defendant ERO completed its own inspection of the existing structures at Memorial Middle School. ERO's report of its inspection noted various problems with the existing structures and the site, including large amounts of standing water and needed repairs or upgrades to the roofing system and exterior walls. The report ultimately recommended that the District should replace the campus rather than proceed with renovations and upgrades, and cautioned that major transformations, such as an evisceration of interior

components for structural repairs to the foundation, sub-flooring and walls would be necessary if the District proceeded with renovations.

Nevertheless, on the basis of subsequent representations from Defendant ERO that it would be safe, feasible and economically practicable to proceed, the governing board of the District authorized the renovation/upgrade project ("the Project"), to be completed in two phases. Phase I would be the upgrade/renovation and adaptive reuse of the three story main building ("Main Building") and Phase II would be the upgrade/renovation and adaptive reuse of the band hall (Stambaugh Building) and a building use for textbook storage ("textbook storage building").

Defendant Texas Descon, L.P. through its general partner Descon 4S, L.L.C. (collectively, the "Descon Defendants") executed a contract as the General Contractor on the Project on or about May 4, 2010. Defendant ERO executed a contract as the Architect on the Project, on or about May 26, 2010. Defendant ERO entered into a contract with Defendant Frank Lam & Associates, Inc. to provide consulting services and to provide recommendations for the structural systems for the Project's renovations, additions, and new construction.

Phase I of the Project entailed demolition of certain outer columns and support structures in order to construct improvements to the Main Building. Specifically, these improvements would be structures that linked newer building wings to the Main Building. During the course of the demolition of the outer support structures, portions of the main school building not designated for demolition, including large parts of the east wall and second story floor, collapsed. As a result of the east wall collapse, portions of the west wall and support columns in the basement suffered structural damage necessitating significant repairs.

Regarding Phase II of the Project, it was discovered in the course of construction of additions and renovations to the textbook storage building and band hall that the walls and support systems would have to be entirely demolished and rebuilt for stability purposes, essentially requiring that the buildings be re-constructed from the foundation up.

Post-delivery of the Phase I Project to Plaintiff, the basement floor exhibited infiltration of water requiring changes to the initial specifications and a major overhaul to the flooring.

Following the collapse, Plaintiff filed a formal property damage claim on Defendant Great Northern Insurance Company (“Great Northern”), Plaintiff’s insurance carrier, under policy number 35822323. Defendant Great Northern hired Rimkus Consulting Group, Inc. (“Rimkus”) to investigate the collapse and damage to the Memorial Middle School campus, pursuant to its own investigation of Plaintiff’s property damage claim. On January 21, 2011, Rimkus produced its “Report of Findings,” and a supplemental letter on March 8, 2011, detailing the results of its investigation. Based upon the representations and conclusions in Rimkus’ Report of Findings (“Rimkus report”) and supplemental letter, Defendant Great Northern made its payment on Plaintiff’s claim.

## V.

### **Breach of Contract by Descon Defendants and Defendant ERO**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through IV of this Petition as if fully set forth herein. The Descon Defendants and Defendant ERO breached their respective construction project contracts with Plaintiff by failing to perform the work as contemplated, or performing the work in a sub-standard manner that caused damage to Plaintiff’s property. The respective contracts were supported by consideration, were never repudiated by any party to them, and all conditions precedent to their enforcement have occurred. Plaintiff incurred damages from the respective breaches of contract by having to incur expenses

to repair, redesign, and replace the damaged buildings. For these damages, Plaintiff seeks redress from this Court.

## VI.

### **Negligence of Descon Defendants, Defendant ERO and Defendant Frank Lam & Associates**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through V of this Petition as if fully set forth herein.

#### *a. Negligence of the Descon Defendants*

The Descon Defendants were negligent in the following ways: planning and/or execution of the demolition portion of Phase I of the Project, resulting in the toppling of large portions of the east wall and second story floor and subsidiary damage to the west wall and basement support columns, and failing to follow the specifications and product installation conditions for the basement floor. This negligence on the part of the Descon Defendants included, but was not limited to, failure to adequately inspect and test the structures and site beforehand and failure to use appropriate demolition means and methods.

#### *b. Negligence of Defendant ERO*

Defendant ERO was negligent in one or more of the following ways: failing to undertake a more thorough investigation and determination of the structural integrity and conditions of the facilities; failure to advise Plaintiff during the design phases of Project of ERO's lack of sufficient information to design and specify the Project; and advising Plaintiff to proceed with bidding the Projects in spite of insufficient plans and specifications. Negligence on the part of Defendant ERO included, but was not limited to, failure to adequately inspect and test the structures, failure to require and review a submittal for proper demolition means and methods,

and failure to design improvements/additions to the existing structures which would have been appropriate and feasible.

ERO's negligence in its advice to Plaintiff and its negligent design, combined with Descon's negligence, resulted in the toppling of large portions of the east wall and second story floor of the main classroom building, along with subsidiary damage to the west wall and basement support columns, moisture infiltration to the basement floor and the additional cost of completion of the textbook storage facility and band hall.

*c. Negligence of Defendant Frank Lam & Associates, Inc.*

Defendant Frank Lam & Associates, Inc. was negligent in the preparation of its structural engineering report and evaluation of existing structures at the Project site, commissioned by Defendant ERO in order to determine issues related to the renovation of existing buildings and to provide recommendations for the structural systems for the Project's renovations, additions, and new construction. The report was based upon cursory observations and Defendant failed to perform any exploratory testing to determine structural conditions. Defendant Frank Lam & Associates, Inc. was further negligent in not preparing instructional demolition plans and being present on the site every day that demolition operations were underway, to guard against careless actions of the contractor and assure that braces were installed against the wall and at the floors to protect property and personnel and guard against improper contractor procedures.

Defendants collectively owed a duty of care to plan and perform the demolition in a manner that would not result in the destruction of the District's property that was not scheduled for demolition, and to recommend and design additions and renovations that were appropriate for existing structures at the Memorial Middle School campus. Defendants, jointly and severally, breached this duty, proximately causing damages to Plaintiff.

Plaintiff has suffered injury in that costs to clean up, redesign, and rebuild the structures were incurred. For these damages, Plaintiff seeks redress from this Court. The Certificate of Merit of Bradford Russell, AIA, Architect, detailing the specific acts of negligence of Defendant ERO, was attached as Exhibit "A" to Plaintiff's Original Petition filed on May 14, 2014 and is incorporated herein for all purposes. The Certificate of Merit of Thomas June Melton, III, P.E., detailing the specific acts of negligence of Defendant Frank Lam & Associates, Inc. was attached to Plaintiff's Second Amended Original Petition filed on August 3, 2015 as Exhibit "B," and is incorporated herein for all purposes.

## VII.

### **Negligence and Negligent Misrepresentation of Defendant Great Northern**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through VI of this Petition as if fully set forth herein. Defendant Great Northern was negligent in its adoption of the Rimkus report, insofar as it arbitrarily excluded from consideration the vast portion of most of the remaining portion of the damaged Main Building excluding the collapsed portions, including cracked columns in the basement. These omissions resulted in the gross underpayment of Plaintiff's property damage claim by Defendant Great Northern. These acts and omissions also constituted common law misrepresentation. In this respect, Defendant Great Northern provided false information to Plaintiff in the course of Defendant's business, which Defendant failed to exercise reasonable care or competence in obtaining and communicating, and Plaintiff justifiably relied on, the information, with damages to Plaintiff proximately resulting from said reliance. Plaintiff was forced to expend large sums of money to pay for repairs to areas, including support columns, that were excluded from consideration in the Rimkus report. Defendant Great Northern committed negligent misrepresentation in adopting the misleading and

incomplete Rimkus report, and limiting its payment of Plaintiff's claim based upon Rimkus' misleading conclusions.

Defendant Great Northern owed a duty of care to Plaintiff, to properly investigate Plaintiff's claim in order to provide a candid and fair estimate of the actual, covered damages that Plaintiff sustained. Defendant Great Northern breached this duty, proximately causing damages to Plaintiff.

### **VIII.** **Violations of Texas Insurance Code by Defendant Great Northern**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through VII of this Petition as if fully set out herein. Defendant Great Northern committed the following acts and omissions relative to Plaintiff's claim and the Policy:

Defendant Great Northern failed to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code section 541.060(a)(2)(A).

Defendant Great Northern failed to adopt and implement reasonable standards for prompt investigation of claims arising under its Policy.

Defendant Great Northern failed to provide promptly a reasonable explanation, in relation to the facts or relevant law, for the denial of a claim, in violation of Texas Insurance Code section 541.060(a)(3).

Defendant Great Northern refused to pay a claim without conducting a reasonable investigation with respect to the claim, in violation of Texas Insurance Code, section 541.060(a)(7).

Plaintiff paid all relevant premiums and complied with applicable claim-reporting procedures as to Great Northern policy number 35822323. All conditions precedent for recovery by Plaintiff have occurred.

Defendant Great Northern knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code section 541.002(1).

**IX.**  
**Violation of Duty of Good Faith and Fair Dealing**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through VIII of this Petition as if fully set out herein. Defendant Great Northern, as Plaintiff's insurer, had a duty to deal fairly and in good faith with Plaintiff in the processing of the property damage claim. Defendant Great Northern breached this duty of good faith and fair dealing by refusing to properly investigate and effectively denying benefits under the Policy that should have been paid. Defendant Great Northern knew or should have known that there was no reasonable basis for denying or limiting the benefits. As a result of Defendant Great Northern's breach of these legal duties, Plaintiff has suffered damages within the jurisdictional limits of this Court.

**X.**  
**Bad Faith Punitive Damages**

Plaintiff realleges and incorporates every material allegation in Paragraphs I through IX of this Petition as if fully set forth herein. Defendant Great Northern acted fraudulently and with malice (as that term is legally defined) in its investigation and handling of Plaintiff's claim for damages. Defendant's conduct, when viewed objectively from its standpoint at the time of the occurrence involved an extreme degree of risk to Plaintiff, considering the probability and

magnitude of potential harm to Plaintiff. Further, Defendant Great Northern had actual subjective awareness of the risk involved, but continued to proceed with conscious indifference to the rights, safety, or welfare of Plaintiff.

## XI.

### Negligent Misrepresentation of Defendant ERO

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through VII of this Petition as if fully set forth herein. Plaintiff brings this action for common law misrepresentation against Defendant ERO. Defendant ERO provided false information to Plaintiff in the course of Defendant's business. ERO failed to exercise reasonable care or competence in obtaining and communicating, and Plaintiff justifiably relied on, the information, with damages to Plaintiff proximately resulting from said reliance. Specifically, Defendant ERO represented to Plaintiff that the improvements in the form of renovations and additions that ERO recommended and designed would be appropriate for the existing structures at the Memorial Middle School campus, and could be feasibly completed as planned without foreseeable damage to existing structures, and without necessitating demolition and rebuilding of portions of structures not designated for demolition/rebuilding.

Plaintiff justifiably relied upon the representations of ERO in making its decision to approve the improvements, based upon ERO's professional credentials, and thereby suffered damages when it was discovered that the improvements recommended and designed by Defendant ERO were not appropriate for the existing structures and could not be completed without excess destruction and rebuilding far beyond what was originally contemplated. As a result of Defendant ERO's negligent misrepresentation, Plaintiff has proximately suffered damages within the jurisdictional limits of this Court.

**XII.**  
**Gross Negligence of Defendant ERO**

Plaintiff realleges and incorporates each material allegation contained in Paragraphs I through VIII of this Petition as if fully set forth herein. Plaintiff further alleges that the acts and omissions of Defendant ERO constituted gross negligence, in that these acts or omissions, when viewed objectively from ERO's standpoint at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of potential harm to others, which ERO had actual subjective awareness of the degree of risk involved, but proceeded with conscious indifference to the rights, safety, and welfare of others. Pleading more specifically, Defendant ERO recommended and designed improvements in the form of renovations and additions to existing structures at the District's Memorial Middle School campus when it had actual, subjective knowledge that no renovations or additions should be contemplated because of inherent problems with the structures, yet nevertheless proceeded to recommend and design these improvements with a conscious disregard of the possibility of catastrophic accidents causing extreme property damage and/or potential injury and loss of life.

**XIII.**  
**Limitations/Repose**

Plaintiff, being a school district, alleges that none of the causes of action pled herein are barred by limitations by operation of Tex. Civ. Prac. & Rem. Code, § 16.061.

Further, Plaintiff alleges that the Statute of Repose found in Tex. Civ. Prac. & Rem. Code § 16.008 does not bar its claim against Defendant ERO, who designed or planned the improvements on the Project, as Plaintiff has filed suit within ten years of the beginning of the operation of the equipment at the Project site.

Further, Plaintiff alleges that the Statute of Repose found in Tex. Civ. Prac. & Rem. Code § 16.009 does not bar its claim against the Descon Defendants, who constructed or repaired improvements in the course of the Project, as Plaintiff filed suit within ten years of the substantial completion of the improvements (i.e., renovations and additions to the buildings in question).

**XIV.  
Resulting Legal Damages**

Plaintiff is entitled to the actual damages proximately resulting from the Defendants' actions and omissions. Plaintiff has sustained damages in excess of the minimal jurisdictional limits of this Court resulting from the Defendant's acts and/or omissions. Plaintiff is also entitled to recover exemplary damages pursuant to Chapter 41 of the Texas Civil Practice & Remedies Code for the actions of Defendant ERO which constitute gross negligence.

**XV.  
JURY DEMAND**

Plaintiff demands a trial by jury. A jury fee has been tendered.

**XVI.  
PRAYER**

WHEREFORE, Plaintiff requests that the Defendants be cited to appear and answer, and that on final hearing, Plaintiff recover from Defendants, jointly and severally:

1. Damages against Defendants in an amount exceeding the minimum jurisdictional limits of this Court, plus accrued interest from the date on which the claim accrued to the date of judgment;
2. Exemplary damages;
3. Attorney's fees in a reasonable sum as the Court may award;
4. Costs of suit, and pre and post judgment interest;

5. In the event of an appeal to the court of appeals, additional reasonable attorney's fee; in the event of granting of writ to the Supreme Court, additional reasonable attorney's fees.
6. Such other and further relief to which Plaintiff may be justly entitled at law or in equity.

Respectfully Submitted,

THE J. RAMIREZ LAW FIRM  
Attorneys at Law  
Ebony Park, Suite B  
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San Juan, Texas 78589  
(956) 502-5424  
(956) 502-5007

By: 

---

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Email: ramirezbook@gmail.com  
Attorney for Plaintiff  
ROBERT SCHELL  
SBN 24007992  
Email: robert\_schell@hotmail.com  
ATTORNEYS FOR  
PHARR SAN JUAN ALAMO I.S.D.

### CERTIFICATE OF SERVICE

I, JESUS RAMIREZ, certify that on the 13th day of October, 2015, a true and correct copy of the foregoing, Plaintiff's Third Amended Original Petition was served on the following counsel of record:

Via Certified Mail,

Return Receipt Requested No. 7015 0640 0002 4515 2543

And Email: sedwards@hudgins-law.com

Spencer Edwards

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Addison, Texas 75001



JESUS RAMIREZ

CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT  
*Plaintiff*

vs.

TEXAS DESCN, L.P., DESCN 4S,  
L.L.C. and ERO INTERNATIONAL,  
L.L.P. d/b/a ERO ARCHITECTS  
*Defendants*

IN THE DISTRICT COURT

389th JUDICIAL DISTRICT

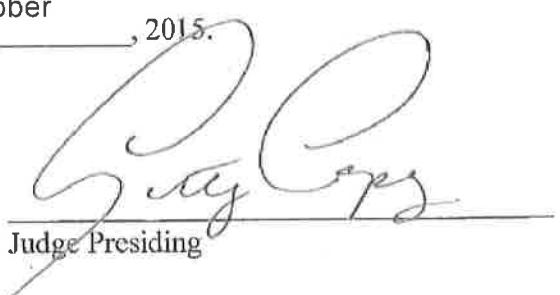
HIDALGO COUNTY, TEXAS

**ORDER GRANTING NONSUIT**

CAME ON BEFORE THE COURT THIS DAY, Plaintiff Pharr San Juan Alamo I.S.D.'s Notice of Nonsuit as to Defendant Rimkus Consulting Group, Inc., and the Court finding that it is in order,

IT IS THEREFORE ORDERED that Plaintiff's claims against Defendant Rimkus Consulting Group, Inc. are dismissed with prejudice to filing the same again at a later date. The parties herein shall bear their own costs associated with the filing of this lawsuit.

Entered this the 23rd day of October, 2015.

  
\_\_\_\_\_  
Judge Presiding

The clerk will notify all parties of record.

Copies to:

Jesus Ramirez, THE J. RAMIREZ LAW FIRM, 700 N. Veterans Boulevard, Ebony Park Ste B, San Juan Texas, 78589, fax no: (956) 502-5007, email: [ramirezbook@gmail.com](mailto:ramirezbook@gmail.com)

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CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT  
*Plaintiff*

vs.

TEXAS DESCN, L.P., DESCN 4S,  
L.L.C. and ERO INTERNATIONAL,  
L.L.P. d/b/a ERO ARCHITECTS  
*Defendants*

IN THE DISTRICT COURT

## 389th JUDICIAL DISTRICT

## HIDALGO COUNTY, TEXAS

## ORDER GRANTING NONSUIT

CAME ON BEFORE THE COURT THIS DAY, Plaintiff Pharr San Juan Alamo I.S.D.'s Notice of Nonsuit as to Defendant Rimkus Consulting Group, Inc., and the Court finding that it is in order.

IT IS THEREFORE ORDERED that Plaintiff's claims against Defendant Rimkus Consulting Group, Inc. are dismissed with prejudice to filing the same again at a later date. The parties herein shall bear their own costs associated with the filing of this lawsuit.

Entered this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

**Judge Presiding**

The clerk will notify all parties of record.

Copies to:

Jesus Ramirez, THE J. RAMIREZ LAW FIRM, 700 N. Veterans Boulevard, Ebony Park Ste B, San Juan Texas, 78589, fax no: (956) 502-5007, email: [ramirezbook@gmail.com](mailto:ramirezbook@gmail.com)

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## CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT  
*Plaintiff*

vs.

TEXAS DESCN, L.P., DESCN 4S,  
L.L.C. and ERO INTERNATIONAL,  
L.L.P. d/b/a ERO ARCHITECTS  
*Defendants*

IN THE DISTRICT COURT

389th JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**NOTICE OF NONSUIT AS TO DEFENDANT RIMKUS CONSULTING GROUP, INC.**

NOW COMES, Pharr San Juan Alamo Independent School District, Plaintiff herein, and files this its Notice of Nonsuit as to Defendant Rimkus Consulting Group, Inc. only, and would show as follows:

**I.**

Plaintiff filed suit against Rimkus Consulting Group, Inc. on or about August 3, 2015, alleging causes of action for negligence and negligent misrepresentation. At this time, Plaintiff desires to nonsuit all claims against Defendant Rimkus Consulting Group, Inc. only with prejudice to refiling same.

WHEREFORE, Plaintiff requests that the Court and parties herein take notice, and that the court grant nonsuit of this action with prejudice.

Respectfully Submitted,

THE J. RAMIREZ LAW FIRM  
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Attorneys for Pharr San Juan Alamo I.S.D.

### CERTIFICATE OF SERVICE

I, JESUS RAMIREZ, certify that on the 13th day of October, 2015, a true and correct copy of the foregoing **PLAINTIFF'S NOTICE OF NONSUIT AS TO DEFENDANT RIMKUS CONSULTING GROUP, INC.** was served on the following counsel of record:

*Via Certified Mail,*

*Return Receipt Requested No. 7015 0640 0002 4515 2604*

*And Email: sedwards@hudgins-law.com*

Spencer Edwards

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Addison, Texas 75001



JESUS RAMIREZ

**CAUSE NO. C-5149-14-H**

**FRANK LAM & ASSOCIATES, INC.'S ANSWER TO PLAINTIFF'S  
SECOND AMENDED ORIGINAL PETITION**

Defendant/Third-Party Defendant Frank Lam & Associates, Inc. (“Lam”) files this its original answer to Plaintiff’s Second Amended Original Petition and would show this Honorable Court the following:

## I. GENERAL DENIAL

1. Defendant/Third-Party Defendant Frank Lam & Associates, Inc. generally denies the allegations made by Plaintiff in its Second Amended Original Petition.

## II. DEFENSES

2. Plaintiff's causes of action are barred by the Economic Loss Rule insofar as the services provided by Lam were provided pursuant to a written contract between Frank Lam & Associates and Defendant ERO International, L.L.P. d/b/a ERO Architects ("ERO"), that the damages claimed by Plaintiff are limited to the improvements that are the subject of the contact, and therefore, the Economic Loss Rule bars recovery by Plaintiff under a negligence theory.

3. The services of Lam were provided pursuant to a written contract, or pursuant to written contracts, between Lam and ERO. Lam would invoke the limitations, conditions, and scope of services contained within those contracts in defense of the claims made by Plaintiff in its Second Amended Petition

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendant Frank Lam & Associates, Inc. prays that upon final hearing of this cause that Plaintiff Pharr San Juan Alamo Independent School District takes nothing against it and that Lam recover its costs, and such other and further relief to which it may be entitled.

Respectfully submitted,

**ALLENSWORTH AND PORTER, L.L.P.**

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By:   
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mbc@aaplaw.com  
S. W. "Whitney" May  
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swm@aaplaw.com

**ATTORNEYS FOR FRANK S. LAM, P.E.  
AND FRANK LAM & ASSOCIATES, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent via e-service on the 23 day of September 2015, to the following:

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 Matthew B. Cano

## CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT Plaintiff	§	IN THE DISTRICT COURT
vs.	§	389 <sup>TH</sup> JUDICIAL DISTRICT
TEXAS DESCON, L.P., DESCON 4S, L.L.C. and ERO INTERNATIONAL, L.L.P. d/b/a ERO ARCHITECTS Defendants	§	HIDALGO COUNTY, TEXAS

**DEFENDANT RIMKUS CONSULTING GROUP, INC.'S  
ORIGINAL ANSWER, AFFIRMATIVE DEFENSES, & SPECIAL EXCEPTIONS**

Rimkus Consulting Group, Inc. ("Rimkus"), a Defendant in the above styled and numbered cause of action, in response to the claims filed against it, would respectfully show unto this Honorable Court as follows:

**I. General Denial.**

1. Subject to such stipulations as we may enter into at time of trial, Rimkus asserts its general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and, upon trial of this case, will require Plaintiff to prove each and every allegation asserted against Rimkus by a preponderance of the evidence, as is required by the laws of the State of Texas and the Constitution of the United States.

2. Rimkus respectfully reserves the right to amend this Original Answer to the allegations set forth in the pleadings on file herein of Plaintiff after Rimkus has the opportunity to investigate more closely these claims, as is the right and privilege of Rimkus under the Texas Rules of Civil Procedure and the laws of the State of Texas.

## II. Affirmative Defenses.

3. By way of further answer, Defendant invokes the provisions of Sections 41.003, 41.004, 41.007, 41.008, 41.010, 41.0105, 41.011 and 41.012 of the Texas Civil Practice and Remedies Code and the punitive damages limitations contained therein.

4. By way of further answer, Defendant invokes its legal right to a reduction of any dollar verdict which may be rendered in this cause by credit for payments made by other persons or entities or by percentage reductions to which Defendant would be entitled as a result of jury findings against other persons or entities. Defendant reserves the right to submit issues against parties who may be present in the case or absent from the case at the time the matter is submitted to the jury for fact determinations.

5. By way of further answer, Defendant affirmatively pleads the incident made the basis of this suit and Plaintiff's alleged damages were caused by the negligence of third parties over whom Defendant had no right of control and for whom Defendant is not responsible.

6. By way of further answer, Defendant affirmatively pleads Plaintiff has failed to use that degree of care which a person or persons of ordinary prudence in the exercise of ordinary care would have used under the same or similar circumstances and such failures on the part of Plaintiff were the sole and/or proximate cause of the incident made the basis of this lawsuit.

7. By way of further answer, Defendant affirmatively pleads any causal connection between Defendant's alleged acts or omissions and the incident made the basis of this lawsuit resulted from a separate and independent agency, not reasonably foreseeable, which constitutes the immediate cause of the incident made the basis of this lawsuit.

8. By way of further answer, Defendant affirmatively pleads Plaintiff has failed to mitigate its damages.

9. By way of further answer, Defendant affirmatively pleads Plaintiff was contributorily negligent and such negligence caused or contributed to the damages, if any, Plaintiff seeks to recover by way of this action. Defendant seeks an apportionment of the negligence of the Plaintiff.

10. By way of further answer, Defendant affirmatively pleads that Plaintiff's claims are barred by limitations.

11. By way of further answer, Rimkus affirmatively pleads laches.

12. By way of further answer, Defendant asserts that the claims of Plaintiff as to this Defendant are groundless and brought in bad faith and brought for the purposes of harassment. Rimkus further asserts that Plaintiff did not make a reasonable inquiry before filing suit against Rimkus and the claims asserted by Plaintiff are not warranted by existing law. As such, and pursuant to TEX. R. CIV. P. 13 and TEX. CIV. PRAC. & REM. CODE § 9.011 *et seq.* and § 10.001 *et seq.*, Rimkus seeks the recovery of its reasonable attorney's fees, expenses and costs incurred in defending Plaintiff's claims and seeks to recover these fees from the Plaintiff and its counsel, jointly and severally, along with any other appropriate sanctions available under the identified statutes.

13. By way of further answer, Rimkus asserts the Plaintiff has failed to attach to the claims the appropriate expert affidavit pursuant to the Texas Certificate of Merit statute, which sets forth at least one act of negligence, if any, or other action, error, or omission that forms the basis of the claims against Rimkus or its engineers claimed to exist and the factual basis for each such claim. The purported affidavit fails to meet the legal requirements of the statute and this failure requires an immediate dismissal of the claims against Rimkus.

### III. SPECIAL EXCEPTIONS

14. Rimkus specially excepts to Plaintiff's Second Amended Petition (and any amended or supplemental pleadings which do not remedy these special exceptions) for the reasons more particularly set forth below. As to each special exception, Rimkus requests the Court order Plaintiff to replead in accordance with the special exceptions and/or dismiss those claims covered by the special exceptions in the event Plaintiff fails to replead.

15. Defendant specially excepts to Plaintiff's latest Petition as the allegations for the recovery of damages, including punitive and exemplary damages, are non-specific, vague and fails to give Defendant fair notice as to Plaintiff's damage claims. Accordingly, pursuant to TEX. R. CIV. P. 47 and 91, Defendant requests that the Plaintiff be required to replead so as to specify the maximum amount of damage claimed.

16. Defendant specially excepts to Plaintiff's latest Petition as Plaintiff has failed to attach to the claims the appropriate expert affidavit pursuant to the Texas Certificate of Merit statute, which sets forth at least one act of negligence, if any, or other action, error, or omission that forms the basis of each theory of recovery against Rimkus or its engineers claimed to exist and the factual basis for each such claim. To the extent the Court does not dismiss the claims, Rimkus requests the Court order Plaintiff to replead in accordance with the statute and/or dismiss those claims covered by the special exceptions in the event Plaintiff fails to replead.

17. **Demand for jury.** Rimkus demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, Rimkus Consulting Group, Inc. prays Plaintiff take nothing by way of this action; Defendant go forth with its costs, including its reasonable attorney's fees, expenses and costs incurred in defending Plaintiff's claims; and Defendant have such other and further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully Submitted,

**WARD LAW FIRM**

By: /s/ David A. Ward, Jr.

David A. Ward, Jr.

SBN 00785177

Richard J. Judge, Jr.

SBN 24010146

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify pursuant to the Texas Rules of Civil Procedure, a true and correct copy of the foregoing pleading was filed with the Hidalgo County District Clerk and forwarded to all counsel of record via the Court's TexFile electronic filing system on this 21st day of September, 2015:

Jesus Ramirez  
Robert Schell  
The J. Ramirez Law Firm  
Ebony Park, Suite B  
San Juan, Texas 78589

**Attorneys for Plaintiff**

Spencer Edwards  
The Hudgins Law Firm  
24 Greenway Plaza, Suite 2000  
Houston, Texas 77046

**Attorneys for Defendants Descon 4S, LLC and Texas Descon, LP**

David P. Benjamin  
Benjamin, Vana, Martinez & Biggs, LLP  
2161 NW Military Highway, Suite 111  
San Antonio, Texas 78213

**Attorneys for Defendant ERO International, LLP d/b/a ERO Architects**

Matthew B. Cano  
Allensworth and Porter, LLP  
100 Congress Avenue, Suite 700  
Austin, Texas 78701

**Attorneys for Descon 4S, LLC and Texas Descon LP**

David W. Medack  
James P. Davis  
Heard & Medack  
9494 South Freeway, Suite 700  
Houston, Texas 77074

**Attorneys for Third Party McAllen Carpet & Interiors, LP**

Brian D. Metcalf  
Cokinos Bosien & Young  
**Attorneys for Texas Descon, LP**

/s/Richard J. Judge, Jr.  
Richard J. Judge, Jr.

**CAUSE NO. C-5149-14-H**

PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT  
*Plaintiff*

vs.

TEXAS DESCN, L.P., DESCN 4S,  
L.L.C. and ERO INTERNATIONAL,  
L.L.P. d/b/a ERO ARCHITECTS  
*Defendants*

IN THE DISTRICT COURT

HIDALGO COUNTY, TEXAS

389<sup>th</sup> JUDICIAL DISTRICT

**SUBPOENA DUCES TECUM****THE STATE OF TEXAS**

**TO:** Any Sheriff; Constable; or any Person not less than 18 years old and not a Party:

**ISSUANCE DATE:** September 17, 2015

**YOU ARE COMMANDED** to serve this Subpoena forthwith by delivery to the following person:

**Witness:** Custodian of Records  
MEP Solutions Engineering  
**Address:** 600 E. Beaumont Avenue  
McAllen, Texas 78501

**GREETINGS,**

**YOU ARE COMMANDED** to appear and produce documents and give your deposition in the above named proceeding at the following place and time:

**Address:**

Apex /PHIMS Document Management, 3217 West Alberta, Edinburg, Texas  
78539

**Date and Time:** Monday, October 12, 2015 at 11:00 o'clock A.M.

**YOU ARE COMMANDED TO BRING** with you the following document(s) and object(s):

All documents in MEP SOLUTION ENGINEERING.'s project file for the Pharr San Juan Alamo Independent School District's T-STEM Building construction project, Memorial Middle School, Pharr, Texas, including but not limited to engineering/design records, blueprints, specifications, drafts, and plans, reports, emails, invoices, estimates, photographs, charts and graphs, requests for payment, and correspondence with Texas Descon, L.P. (or associated entity), ERO International, L.L.P. d/b/a ERO Architects, and the structural engineer on the project.

**Subpoena issued on the request of: Plaintiff Pharr San Juan Alamo Independent School District**

**Jesus Ramirez**  
**700 North Veterans Boulevard, Suite B**  
**San Juan, Texas 78589**  
**Phone: 956/502-5424**  
**Fax: 956/502-5007**  
**Attorney for Pharr San Juan Alamo I.S.D.**

**Inquiries may be addressed to:**  
**The J. Ramirez Law Firm**

**This subpoena shall remain in effect until you are relieved by the court. A witness fee will be paid to you upon your appearance by the party requesting this subpoena. Failure to comply with this subpoena will subject you to the judicial powers of a Texas court, including contempt of court and being forcibly compelled to appear.**

**FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.**

**Texas Rules of Civil Procedure, Rule 176.8 Enforcement of Subpoena.**

**(a) Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

September 17, 2015

Date

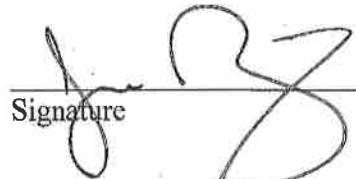


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**Robert Schell, Attorney Issuing Subpoena  
under Rule 176 of the Texas Rules of Civil  
Procedure**

**RETURN ON SUBPOENA DUCES TECUM**

I certify and return that I received the annexed *subpoena duces tecum* on 9/18, 2015, at 10:10 a.m./p.m., and that I executed this *subpoena duces tecum* by delivering a copy to Luis Javier Pena (MEP Solutions Engineering, Custodian of Records) at 600 East Beaumont Avenue, McAllen, Texas 78501, on the 18 day of Sept., 2015. My fee for the execution of this subpoena is \$ 60.00.



Signature

Name: Luis Javier Pena

Signature: Luis Javier Pena

**DIRECT WRITTEN QUESTIONS FOR CUSTODIAN OF RECORDS  
FOR MEP SOLUTIONS ENGINEERING**

1. Please state your full name for the record.
2. What is your connection, title, affiliation, and/or position with MEP SOLUTIONS ENGINEERING, now and in the past?
3. Did you receive a subpoena requesting documents? If yes, give all responsive documents to the Deposition Officer to be marked as "Exhibit 1."
4. Are the documents marked as "Exhibit 1" originals or true and correct copies of originals?
5. Were the documents marked as "Exhibit 1" documents made, generated, produced, or kept in the ordinary course of business?
6. Were the documents marked as "Exhibit 1" made at or near the time of the acts, events, conditions, or opinions to which they refer and were they made by and from information transmitted by a person with knowledge of the activity?
7. Were there any documents responsive to the subpoena duces tecum that you did not produce? If yes, list below any such documents not produced and state the reason for non-production.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

Affiant's Signature

---

Affiant's Address

STATE OF TEXAS  
COUNTY OF HIDALGO

BEFORE ME THE UNDERSIGNED OFFICER ON THIS \_\_\_\_\_ day of  
\_\_\_\_\_, 2015, personally appeared \_\_\_\_\_, and known to me, to be the person stated herein, and I proceeded to take the answers of the witness that are affixed to the questions and caused the same to be signed and sworn to by the witness, and such answers were signed and sworn to by the witness before me, to certify which witness my hand and seal of office on the day specified above.

Notary Public, in and for  
the State of Texas

CAUSE NO. C-5149-14-H

PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT  
*Plaintiff*

vs.

TEXAS DESCN, L.P., DESCN 4S,  
L.L.C. and ERO INTERNATIONAL,  
L.L.P. d/b/a ERO ARCHITECTS  
*Defendants*

IN THE DISTRICT COURT

HIDALGO COUNTY, TEXAS

389<sup>th</sup> JUDICIAL DISTRICT

**NOTICE OF DEPOSITION ON WRITTEN QUESTIONS OF CUSTODIAN OF  
RECORDS FOR NON-PARTY MEP SOLUTIONS ENGINEERING**

1. Pursuant to Rule 205, T.R.C.P., Movant PHARR SAN JUAN ALAMO INDEPENDENT SCHOOL DISTRICT, Plaintiff in the above-captioned action, hereby gives notice of Deposition On Written Questions of the non-party listed below. The subpoena is issued under Rule 176.2(a) to be served on the following:

**Witness:** Custodian of Records  
MEP Solutions Engineering

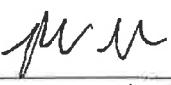
**Address:** 600 E. Beaumont Ave.  
McAllen, Texas 78501

2. The place of deposition is 3217 West Alberta, Edinburg, Texas 78539 on Monday, the 12<sup>th</sup> day of October, 2015, at 11:00 o'clock A.M., as listed on the subpoena, unless alternate arrangements are made with the deposition officer, a notary public to be designated. If the witness proves to be uncooperative, Plaintiff may issue additional subpoenas for the witness or his representatives to appear at other locations.
3. A copy of this Notice is being served on the witness in compliance with Rule 205, T.R.C.P. concerning Discovery from Non-Parties.
4. A copy of this Notice is being served on all other attorneys or unrepresented parties of record. Pursuant to Rule 200, all other parties may timely serve cross-questions by sending copies to the undersigned, which will be propounded at the deposition. The direct questions are on the attached pages.
5. The transcript of the deposition upon written questions will be available from the undersigned for all other parties to inspect and/or copy, upon reasonable advanced notice.

Respectfully Submitted

**THE J. RAMIREZ LAW FIRM**

Attorneys at Law  
Ebony Park, Suite B  
700 North Veterans Boulevard  
San Jun, Texas 78589  
Phone: (956) 502-5424  
Fax: (956) 502-5007

By:   
JESUS RAMIREZ  
SBN 16501950  
Email: ramirezbook@gmail.com  
ROBERT SCHELL  
SBN 24007992  
Email: rschell@rg-legal.com

ATTORNEYS FOR PLAINTIFF  
PHARR SAN JUAN ALAMO  
INDEPENDENT SCHOOL DISTRICT

**CERTIFICATE OF SERVICE**

I, ROBERT SCHELL, certify that on the 17<sup>th</sup> day of September, 2015, the foregoing NOTICE OF DEPOSITION ON WRITTEN QUESTIONS OF CUSTODIAN OF RECORDS FOR NON-PARTY MEP SOLUTIONS ENGINEERING was served on the following:

**Via Hand Delivery**

Custodian of Records  
MEP Solutions Engineering  
600 E. Beaumont Avenue  
McAllen, Texas 78501

**Via Certified Mail,**

Return Receipt Requested No. 7015 0640 0006 9943 8637

And Email: dbenjamin@benlawsa.com

David P. Benjamin  
BENJAMIN, VANA, MARTINEZ & BIGGS, LLP  
2161 NW Military Highway, Suite 111  
San Antonio, Texas 78213

**Via Certified Mail,**

Return Receipt Requested No. 7015 0640 0006 9943 8644

And Email: mbc@aaplaw.com

Matthew B. Cano  
Sara Whittington May  
ALLENSWORTH AND PORTER, L.L.P.  
100 Congress Avenue, Suite 700  
Austin, Texas 78701

**Via Certified Mail,**

Return Receipt Requested No. 7015 0640 0006 9943 8651

And Email: sedwards@hudgins-law.com

Spencer Edwards  
THE HUDGINS LAW FIRM  
A PROFESSIONAL CORPORATION  
24 Greenway Plaza, Suite 2000  
Houston, Texas 77046

Via Certified Mail,

Return Receipt Requested No. 7015 0640 0006 9943 8668

And Email: dmedack@heardmedackpc.com

David W. Medack

James P. Davis

HEARD & MEDACK, L.P.

9494 Southwest Freeway, Suite 700

Houston, Texas 77075

  
ROBERT SCHELL

## SENDER: COMPLETE THIS SECTION

## COMPLETE THIS SECTION ON DELIVERY

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Texas Secretary of State  
Citation Unit  
P.O. Box 12079  
Austin, Texas 78711-2079



9590 9403 0337 5155 5335 79

## 2. Article Number (Transfer from service label)

7015 0640 0004 9607 8746

PS Form 3811, April 2015 PSN 7530-02-000-9053

## A. Signature

**X** Agent Addressee

## B. Received by (Printed Name)

## C. Date of Delivery

D. Is delivery address different from Item 1?  Yes  
If YES, enter delivery address below:  No

C 5149-14-H

3. Service Type

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- **Sender:** Please print your name, address, and ZIP+4® in this box.

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**District Clerk**

P.O. Box 57

EDTBURG, DKT. 2014

LAURA HINOJOSA, CLERK

District Courts, Hidalgo County

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